

ADVISORY OPINION NO. 2001-07

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WEST VIRGINIA ETHICS COMMISSION

COPY

OPINION SOUGHT

A County Commission's Project Coordinator asks if she may oversee a project which involves an engineering firm which employs her husband.

FACTS RELIED UPON BY THE COMMISSION

The Project Coordinator is employed full-time as Executive Director of the County Housing Authority and works part-time as the County Commission's Project Coordinator, overseeing the development of county projects.

An engineering firm bid on and was awarded a contract with the County Commission for work on a particular project. The firm later hired the Project Coordinator's spouse. The Project Coordinator asks if it would be a violation for her to manage a project for which her husband's employer provides contract engineering work.

CODE PROVISIONS RELIED UPON BY COMMISSION

WV Code 6B-2-5(d)(1) *Interests in public contracts*, provides in part that ... no elected or appointed official or employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in ... a contract which such official or employee may have direct authority to enter into, or over which he or she may have control ...

WV Code 61-10-15 states in part that ... It shall be unlawful for any member ... of any ... county or district board ... to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract ... [over] which as such member he may have any voice, influence or control ...

WV Code 6B-2-5 (b) provides in part that ... a public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person.

ADVISORY OPINION

Both the Ethics Act and WV Code 61-10-15, a criminal misdemeanor statute, prohibit public servants from being a party to, or having a financial interest in, a public contract, purchase or sale over which their public position gives them control.

The Ethics Act's prohibition against private interests in public contracts, WV Code 6B-2-5(d), applies to public servants, their spouses and businesses with which they or their spouses have an ownership interest of more than 10%. This prohibition does not apply to a business which employs a public servant or his or her spouse, unless one of them also has an ownership interest of more than 10% in the business. The prohibition does not apply here, since neither the Project Coordinator, nor her husband have an ownership interest in the firm by which he is employed.


Unlike the Ethics Act, WV Code 61-10-15 does apply to a business by which the spouse of a public servant is employed and the Coordinator's oversight of the project could be a problem, if she is included among those who are subject to the provisions of WV Code 61-10-15.

WV Code 61-10-15 applies only to certain specifically enumerated county personnel, i.e.,

“... any member of a county commission, overseer of the poor, district school officer, secretary of a board of education, supervisor or superintendent, principal or teacher of public schools, or any member of any other county or district board, or for any county or district officer”

The Commission finds that the position of project coordinator is not one of those covered by or subject to the provisions of WV Code 61-10-15. Therefore, it would not be a violation of WV Code 61-10-15 for the Project Coordinator to oversee the project which involves her husband's employer.

No other provision of the Ethics Act prohibits the Project Coordinator from managing a project merely because it involves her husband's employer. However, it would be a violation of the Ethics Act's prohibition against the use of office for private gain for the Project Coordinator to give preferential treatment to her husband's employer in its work on the Commission's project.



Chairman